

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

DANIEL WAYNE WHITAKER,	)	
Institutional ID No. 1710847,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	1:11-CV-00064-C
ABILENE POLICE DEPARTMENT, <i>et al.</i> ,	)	
	)	
Defendants.	)	ECF

**ORDER**

Plaintiff Daniel Wayne Whitaker, acting *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and was granted permission to proceed *in forma pauperis*.

The complaint was transferred to the docket of the United States Magistrate Judge, who ordered authenticated copies of Plaintiff's records that were relevant to his complaint and notified authorities that a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1985), was scheduled June 21, 2012.

Because Plaintiff did not consent to proceed before the United States Magistrate Judge, pursuant to this Court's Order entered on May 23, 2012, the Magistrate Judge entered a Report and Recommendation and transferred the case back to this Court on June 8, 2012. Plaintiff has not filed objections to the Report and Recommendation.

This Court has made an independent examination of the record in this case and finds that the Magistrate Judge's findings and conclusions should be ADOPTED.

It is, therefore, ORDERED:

(1) Civil Action No. 1:11-CV-00064-C is DISMISSED without prejudice.

(2) Any pending motions are DENIED.

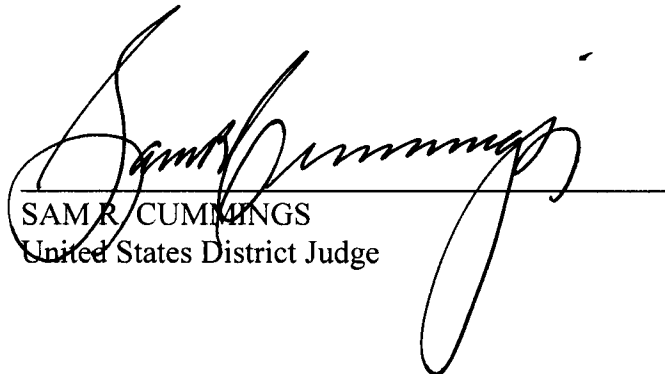
(3) The dismissal of Plaintiff's complaint does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner **shall be required to pay the full amount of a filing fee.**") (emphasis added); *Hatchet v. Nettles*, 201 F.3d 651, 654 (5th Cir. 2000) ("No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.").

(4) Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$455.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

**SO ORDERED.**

Judgment shall be entered accordingly.

Dated October 23, 2012.

  
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SAM R. CUMMINGS  
United States District Judge